

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARTHA KISNER

Claimant

VS.

U.S.D. #260

Respondent

AND

KANSAS ASSOCIATION OF SCHOOL BOARDS

Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket Nos. 195,477
202,669

ORDER

Respondent filed a request for Appeals Board review of a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on January 5, 1996.

ISSUES

Respondent raised the following issues for Appeals Board review:

- (1) Whether claimant suffered an accidental injury that arose out of and in the course of her employment with the respondent;
- (2) Whether claimant is entitled to additional psychological treatment through Dr. William Alexander; and
- (3) Whether claimant is entitled to temporary total disability benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

(1),(2) This case involves two separate docket numbers with two different alleged dates of accidents. Claimant alleged that she injured her upper extremities while performing her regular work activities from June 1, 1993 through April 25, 1994 in Docket Number

195,477. In Docket Number 202,669, claimant alleged injury to her upper extremities and shoulders from October 3, 1994 through June 15, 1995. Claimant was furnished medical treatment by the respondent through Dr. James Gluck, an orthopedic surgeon, who performed a right carpal tunnel release on April 26, 1994 and a left carpal tunnel release on June 9, 1994. Claimant returned to work and experienced reoccurring symptoms. Dr. Gluck again treated claimant and performed another right carpal tunnel release on June 20, 1995 and a left carpal tunnel release on August 8, 1995. During both of these periods of medical treatment, Dr. Gluck also referred the claimant for psychological treatment to C. William Alexander, a licensed clinical psychologist. Dr. Gluck released claimant from his treatment on October 5, 1995, with a permanent impairment rating and restrictions.

Claimant filed a proper demand for benefits upon the respondent and a benefit review conference was held that did not resolve the dispute. Claimant's attorney made a specific request at the preliminary hearing for treatment of claimant's psychological condition that is a natural and probable consequence directly related to her physical injuries. He also requested that claimant receive temporary total disability benefits, payment of outstanding psychological medical expenses, mileage and prescriptions. No testimony was taken at the preliminary hearing but medical records were offered and admitted into evidence. As a result of the preliminary hearing, the Administrative Law Judge ordered respondent to provide psychological treatment with Dr. Alexander, payment of the outstanding psychological medical expenses, mileage and prescriptions. Temporary total disability payments were ordered from October 5, 1995 through October 22, 1995 and reinstated from December 2, 1995 and continuing until claimant is released by the authorized medical care provider.

The first issue that the Appeals Board will address in this case is claimant's challenge that the Appeals Board does not have jurisdiction to review this preliminary hearing Order. The Appeals Board has reviewed the preliminary hearing record and agrees with the claimant. Respondent's request for review does not challenge the issue of whether or not claimant suffered an accidental injury to her upper extremities that arose out of and in the course of her employment. What the respondent does challenge is whether the claimant's psychological problems are directly related to her physical injuries. The Appeals Board has in its previous decisions found that this issue relates more to the issue of nature and extent of claimant's injury than it does to the issue of whether claimant's accidental injury arose out of and in the course of her employment. See Barbara K. Hall v. Blue Cross & Blue Shield, Inc., Docket Number 158,293, (Sept. 1994). Psychological problems do not have to result from the work performed but do have to be directly connected or traceable to the physical injury. See Love v. McDonald's Restaurant, 13 Kan. App. 2d 397, 771 P.2d 557 (1989). The Appeals Board finds respondent's appeal does not, when properly described, challenge a finding that the claimant suffered an accidental injury arising out of and in the course of her employment. The Appeals Board, therefore, does not have jurisdiction to review this preliminary hearing Order on the allegation that the issue is whether claimant's accidental injury arose out of and in the course of her employment with respondent.

(3) The respondent also challenges the Order of the Administrative Law Judge entitling the claimant to temporary total disability benefits. Again, the Appeals Board has on numerous occasions previously found that the administrative law judge has the specific authority to decide claimant's entitlement to temporary total disability benefits. See K.S.A. 44-534a(a)(2). Accordingly, the Appeals Board also does not have jurisdiction to review this issue.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the application for review filed by the respondent is dismissed as the Appeals Board lacks jurisdiction to review the January 5, 1996, preliminary Order.

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Kelly Johnston, Wichita, Kansas
Anton C. Andersen, Kansas City, Kansas
Paul Dugan, Wichita, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director